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10 UNITED STATES DISTRICT COURT

11 NORTHERN DISTRICT OF CALIFORNIA

12 UNITED STATES OF AMERICA,) **No. C 08-1305 JCS**
13 Plaintiff,)
14 v.) UNITED STATES
15 APPROXIMATELY \$72,000 IN UNITED) CASE MANAGEMENT
16 STATES CURRENCY) STATEMENT
17 Defendant.)

18 The United States submits this case management statement. Because no one has filed a claim
19 or answer as required by the Supplemental Rules for Admiralty or Maritime Claims and Asset
20 Forfeiture Actions, Rule G(5), there is no party with whom the United States can file a joint case
21 management statement.

22 **A. JURISDICTION AND SERVICE**

23 This Court has jurisdiction under 28 U.S.C. §§ 1345 and 1335(a), and 21 U.S.C.
24 § 881(a)(6). This action is timely filed in accordance with 18 U.S.C. § 983(a)(3)(A).
25 Venue in this Court is proper because defendant \$72,000 was seized in the Northern District of
26 California. 28 U.S.C. §§ 1335(b) and 1335.

27 Pursuant to Supplemental Rule G(4)((b)(iii)(E) notice was sent to Earl Kennedy, Jr., and
28 Robert Porter at the "last address that person gave to the agency that seized the property." In
addition, pursuant to Supplemental Rule 4(a) the United States published notice of the pending

1 civil forfeiture action.

2 **B. STATEMENT OF FACTS AND EVENTS UNDERLYING THE ACTION**

3 This is a judicial forfeiture action, as authorized by 21 U.S.C. § 881(a)(4) and (6),
4 involving the seizure of defendant approximately \$72,000 in United States Currency, which was
5 seized as money furnished or intended to be furnished by a person in exchange for a controlled
6 substance, or money traceable to such an exchange, or money used or intended to be used to
7 facilitate a violation of Subchapter I, Chapter 13 of Title 21 United States Code.

8 On October 16, 2007, San Francisco Postal Inspectors seized \$72,000 in United States
9 Currency from Express Mail package EB 406580511 US (hereinafter "Express Mail package")
10 which was opened pursuant to written consent from Earl Kennedy, Jr., (hereinafter "Kennedy")
11 the intended recipient.

12 Kennedy had previously been identified as a frequent recipient of Express Mail packages
13 from Baton Rouge, Louisiana, sent initially to 267 Sextus Road, Oakland, California, 94603 and
14 later to P.O. Box 27215, Oakland, California, 94542. Due to the unusual number of Express
15 Mail packages being received at P.O. Box 27215, a mail watch had been placed on the Post
16 Office box on September 26, 2007, by United States Postal Inspector Megan Bradley (hereinafter
17 "Inspector Bradley"). On October 13, 2007, Inspector Bradley was notified that an eighteen
18 pound Express Mail package addressed to Kennedy, at P.O. Box 27215, Oakland, California,
19 94602 was being held at the United States Post Office at 2226 MacArthur Boulevard, Oakland,
20 California. The return address on the package was Robert Porter, 2901 Jefferson Highway #522,
21 Baton Rouge, Louisiana, 70816.

22 Inspector Bradley reviewed Postal Service Form 1093 which was used to open P.O. Box
23 27215 and determined that it had been completed by Kennedy on October 6, 2005, using
24 California Driver's License #B9646774 as identification and listing 898 Davis, #202, San
25 Leandro, California, 94577 as his home address on the application. According to the mail carrier
26 for that address, Kennedy had moved from the Davis Street address two years ago.

27 On October 15, 2007, a certified narcotics detection canine, Xena, alerted to the Express
28 Mail package.

1 On October 16, 2007, Inspector Bradley attempted to reach Kennedy using the phone
2 number listed on the Express mail package, (510) 393-5969. She left two messages for Kennedy
3 stating that she was from the Post Office and was holding his Express Mail package. She did not
4 receive a return phone call.

5 After approximately one hour and twenty minutes, Inspector Bradley called the telephone
6 number listed for the sender, Robert Porter (225) 266-0772. A male answered and identified
7 himself as "Robert". Inspector Bradley told him that she was trying to get in touch with Kennedy
8 regarding his Express Mail package. Robert said he would call Kennedy and have him come to
9 the Post Office to pick up the package.

10 Approximately five minutes later, Inspector Bradley received a telephone call from Kennedy
11 who told her he was coming to the Post Office to pick up his package that had been "missent."
12 Inspector Bradley told Kennedy to ask for "Megan" when he arrived at the Post Office.

13 Inspector Bradley waited to the side of the retail counter inside the Post Office.
14 She observed an African-American male, who resembled the California Driver's License picture
15 for Earl Kennedy, Jr., approach the counter. As he approached the counter, Kennedy asked
16 Inspector Bradley if she was "Megan". Inspector Bradley identified herself, showed her
17 credentials and explained that she was a Postal Inspector.

18 Kennedy told Inspector Bradley that he was not expecting a package. He provided written
19 consent for the Express Mail package to be opened. The Express Mail package contained a VCR
20 and two small DVD players. Kennedy said that his cousin, David, sometimes send him
21 equipment for their film making business, but he did not know a Robert Porter who was listed as
22 the sender on the Express Mail package. When questioned further about the film business,
23 Kennedy said he does not advertise or have a website. He stated that he is known on the streets
24 and people just know where to find him when they want one of his movies.

25 Further examination of the equipment revealed four vacuum sealed packages of money
26 secreted into the shells of the VCR and DVD players. When questioned about the money,
27 Kennedy stated he knew nothing about it and the Postal Inspectors could take it. Kennedy
28 provided a written disclaimer for the package.

1 Kennedy stated he lives with his girlfriend, Jasmine, in San Leandro, but he was not sure
2 of her actual address. Inspector Bradley later discovered that a Jasmine Wilson, at 26970
3 Hayward Boulevard, #509, Hayward, California, 94542, had received an Express Mail package
4 from Robert Porter on June 8, 2007. She had received Express Mail packages from Robert Porter
5 on March 19, 2007, and May 17, 2007 at P.O. Box 55521, Hayward, California, 94542. She also
6 had received two other Express Mail packages from Baton Rouge, Louisiana on May 21, 2007
7 and July 11, 2007.

8 Immediately after Kennedy left, Inspector Bradley called Robert Porter and told him that
9 Kennedy had denied knowing Robert Porter and that Kennedy had said he was not expecting a
10 package. Porter asked if she had spoken with the "real Earl Kennedy". Inspector Bradley replied
11 that she had seen Kennedy's drivers's license and she had spoken with the "real Earl Kennedy."
12 Porter stated that he had notified Kennedy that this particular package was in the mail. Porter
13 also said that he had just spoken to Kennedy to tell him that the package was at the Post Office.
14 When asked about the contents of the package, Porter described a VCR and two DVD players; he
15 did not mention money. Porter was agitated and asked that the package be returned to him.
16 When Inspector Bradley asked Porter if there was any reason a narcotics canine would alert to the
17 package, Porter immediately hung up the phone.

18 On October 19, 2007, Inspector Bradley received a call from Robert Porter who asked about
19 his money. Inspector Bradley had never told Porter that money was found in the Express Mail
20 Package sent to Kennedy. Later that same day, Kennedy returned to the Post Office and stated he
21 had changed his mind and wanted his parcel back.

22 The denominations of the defendant \$72,000 were: 137 x \$100 dollar bills; 5 x
23 \$50 dollar bills; 2,791 x \$20 dollar bills; 223 x \$10 dollar bills. The packaging and
24 denominations of defendant \$72,000 are consistent with those used for, or from, the sale of
25 illegal controlled substances. When Inspector Bradley opened the vacuumed sealed bags, a strong
26 odor of men's cologne emitted from the bags. Based upon her training and experience Inspector
27 Bradley knew that narcotics traffickers often try throw off a narcotics canine by using cologne or
28 another odor masking agent.

1 During the course of her investigation Inspector Bradley discovered that Kennedy had
2 been convicted in 2003 of a violation of California Health and Safety Code §11357(A)
3 Possession of Concentrated Cannabis in Oakland, California. Robert Porter had been convicted
4 in 2000 in Oakland, California of a violation of California Health and Safety Code § 11360(A),
5 Sell/Furnish/Marijuana/Hash.

6 Due to the totality of the circumstances, defendant \$72,00 in United States
7 currency was seized as money furnished or intended to be furnished by a person in exchange for
8 a controlled substance, or traceable to such an exchange, or money used or intended to be used to
9 facilitate a violation of Subchapter I, Chapter 13 of Title 21 United States Code.

10 **C. PRINCIPAL ISSUES**

11 **1. The principal factual issues that the parties dispute are:**

12 **2. The principal legal issues that the parties dispute are:**

13 No one has submitted a timely claim or answer and therefore no factual or legal issues have
14 been joined.

15 **3. The following issues as to service of process, personal jurisdiction, subject matter
16 jurisdiction, or venue remain unresolved.**

17 As noted in section A above, pursuant to Supplemental Rule G(4)((b)(iii)(E) notice was sent
18 to Earl Kennedy, Jr., and Robert Porter at the “last address that person gave to the agency that
19 seized the property.” In addition, pursuant to Supplemental Rule 4(a) the United States
20 published notice of the pending civil forfeiture action. Notice was sent to Earl Kennedy at three
21 different addresses which were either provided by Mr. Kennedy or discovered by the Postal
22 Service. Each of those packages were returned as “unclaimed” or “moved, left no address”. The
23 United States received nothing from Robert Porter until Tuesday, September 2, 2008, when
24 Assistant United States Attorney, Susan B. Gray received a telephone call from an individual
25 identifying himself as Robert Porter. Mr. Porter said that he had received notice of the Case
26 Management Conference and a copy of the Clerk’s Entry of Default. He claimed he had not
27 received the initial Complaint and Notice of Forfeiture. He stated that he had moved and his
28 mail was only sporadically forwarded. (The Case Management Conference and the Clerk’s Entry

1 of Default were mailed to the same address as the initial complaint.)

2 Mr. Porter inquired about the Case Management Conference scheduled before this Court for
3 September 12, 2008 at 10:30 a.m. and asked if he needed to be there. Mr. Porter said that he
4 was now living in Baton Rouge, LA and provided a phone number. Mr. Porter gave a new
5 address in Baton Rouge and requested all documents be sent to him at S.U. Box 13896, Baton
6 Rouge, LA 70813. The Assistant United States Attorney advised Mr. Porter to call the Court's
7 Clerk and advise the Clerk of his interest in the case and the Case Management Conference.
8 Communication during the telephone call was difficult and before the call could be completed
9 the line went dead. It should be noted that Mr. Porter was calling from Baton Rouge which was
10 in the path of Hurricane Gustave. Mr. Porter did not call back.

11 **4. The following parties have not yet been served:**

12 See Section A above.

13 **5. Any additional parties that a party intends to join are listed below:**

14 None.

15 **6. Any additional claims that a party intends to add are listed below:**

16 None.

17 **D. ALTERNATIVE DISPUTE RESOLUTION**

18 Not applicable at this time.

19 **E. CONSENT TO JURISDICTION BY A MAGISTRATE JUDGE**

20 The United States has consented to have a Magistrate Judge conduct all future proceedings.

21 **F. DISCLOSURES**

22 Forfeiture actions are exempt from the initial disclosures required in Rule 26, Federal Rules
23 of Civil Procedure.

24 **G. EARLY FILING OF MOTIONS**

25 The United States filed a Motion for Entry of Default on August 13, 2008, and it was granted
26 on August 18, 2008. The United States intends to seek Default Judgement and will oppose any
27 attempt by Mr. Porter to set aside the Entry of Default.

28 **H. DISCOVERY**

I. PRETRIAL AND TRIAL SCHEDULE

Not applicable at this time.

J. DATE OF NEXT CASE MANAGEMENT/STATUS**CONFERENCE**

K. IDENTIFICATION AND SIGNATURE OF LEAD TRIAL COUNSEL

Susan B. Gray
Assistant United States Attorney
Asset Forfeiture Unit
450 Golden Gate Avenue, 9th Floor
San Francisco, CA 94102
415 436 7324

No one has submitted a claim or answer for any claimant to the defendant funds.

L. OTHER MATTERS/REQUEST TO CONTINUE

The United States suggests that, if Mr. Porter does contact the Court, he should be allowed to appear at the Case Management Conference via telephone as it appears he is currently out of the state. The United States will provide the phone number to the Court should the Clerk wish to contact Mr. Porter directly. It is not included in this document because of privacy concerns.

Respectfully submitted,

JOSEPH P. RUSSONIELLO
United States Attorney

Dated:09/03/08

Respectfully submitted,

/S/

Susan B. Gray
Assistant United States Attorney

CERTIFICATE OF SERVICE

The undersigned hereby certifies that she is an employee in the Office of the United States Attorney for the Northern District of California and is a person of such age and discretion to be competent to serve papers. The undersigned further certifies that she caused a copy of

- UNITED STATES CASE MANAGEMENT STATEMENT

to be served this date via U.S. first mail delivery upon the person(s) below at the place(s) and address(es) which is/are the last known address(es):

Earl Kennedy Jr.
P.O. Box 27215
Oakland, CA 94602-0415

Earl Kennedy Jr.
898 Davis Street, Apt #202
San Leandro, CA 94577-1554

Earl Kennedy Jr.
26970 Hayward Blvd., Apt #509
Hayward, CA 94542-2074

Robert Porter
S.U. Box 13896
Baton Rouge, LA 70813

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct to the best of my knowledge.

Executed this 3rd day of September, 2008, at San Francisco, California.

/S/
CAROLYN JUSAY
Legal Assistant
Asset Forfeiture Unit

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